IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

W.P.Nos.16773, 17618, 17758, 17650 and 17651 of 2004

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WRIT PETITION NO : 16773 of 2004

Between:

Bijuri Lakshmi W/o. Bijjuri Anand,
Laxmanchanda Mandal, Adilabad District.

..... PETITIONER

AND

1 The State of A.P., rep. by its Prl. Secretary,
Home Department, Secretariat Buildings, Hyderabad.
2 The Collector & District Magistrate, Adilabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a Writ, order or direction, more particularly one in the nature of writ, order or direction, more particularly one in the nature of writ of Habeas Corpus" directing the respondents to produce the petitioners husband Mr. Bijjuri Anand now detained in Chanchalguda Prison before this Hon'ble Court and to order his release forthwith after declaring that his detention is illegal and invalid and quash the orders passed by the 2nd respondent in Rc.NO.B3/748/P&E/2004 dt. 23.8.2004.

Counsel for the Petitioner: MR.S.NIRANJAN REDDY

Counsel for the Respondents: THE ADVOCATE GENERAL

WRIT PETITION NO : 17618 of 2004

Between:

Bukya Sathamma, W/o Bukya Lokesh,
R/o Ramnagar, Karimnagar

..... PETITIONER

AND

1 The Government of Andhra Pradesh, represented by its Chief Secretary, General Administration (Law and Order-II) Department, Secretariat Buildings, Hyderabad.
2 The Collector and District Magistrate, Karimnagar
3 The Superintendent of Prohibition and Excise, Karimnagar
4 The Superintendent, Central Prison, Warangal.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of Writ of Habeas Corpus or any other appropriate Writ order or direction to produce the detenue "Bukya Lokesh, S/o Jumia, aged 30 years, R/o Ramnagar, Karimnagar" now illegally detained with respondent No.4 before this Hon'ble Court and upon such production he may be set free and thereby declare the order of the detention which is passed by the respondent No.2 in Rc.No.C1/4344 dated 26-08-2004 and confirmed by the respondent through G.O.Rt.No.5058 dated 2-9-2004 as illegal, null and void and violative of Articles 21 and 22(5) of the constitution of India

Counsel for the Petitioner: MR.K.VENUMADHAV

Counsel for the Respondent: THE ADVOCATE GENERAL

WRIT PETITION NO : 17758 of 2004

Between:

Kakarapalli Kameswari, W/o. Apparao, Hindu,
R/o. Parlovpet, Kakinada, E.G. District.

..... PETITIONER

AND

1 State of A.P. rep by its Secretary General Admn. Department,

Secretariat, Hyderabad.
2 District Collector & Dist. Magistrate, East Godavari, Kakinada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Habeas Corpus, directing the respondents to produce the detenue Kakarapalli Prasad @ Siva Prasad S/o. Apparao, Hindu, 30 years Caste Setti Balija, R/o. Parlovpet, Kakinada, E.G. District, who is the son of the petitioner herein into the Court by declaring the order of detention as illegal null and void and violative of fundamental rights particularly private liberty of an individual guaranteed under the Constitution of India and for a consequential order to set the detenue at liberty.

Counsel for the Petitioner: MR.CH.DHANAMJAYA

Counsel for the Respondents: THE ADVOCATE GENERAL

WRIT PETITION NO : 17650 of 2004

Between:

Boya Ramanjaneyulu S/o Late B. Basappa, rep by his best friend and maternal uncle of the detained Boya Naganna, S/o Boya Sunkappa R/o 19-360,Gunthakol, Ananthapur

..... PETITIONER

AND

1 The District Collector, Ananthapur District
2 The Secretary, Department of General Administration, Governemtn of Andhra Pradesh, Secretariat Buildings, Hyderabad
3 The Commissioner, Excise & Prohibition Hyderabad.
4 The Director, Government Regional Prohibition & Excise.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of writ of Habeas Corpus by holding continued detention of Boya Ramanjaneyulu S/o late B. Basappa detained under the proceedings of the 1st respondnet in Rc. No. 479/P & E/2004/B, dt 14-8-2004 as illegal, arbitrary and unconstitutional and consequently to produce the petitioner before this Honble Court and set the detenue at liberty forthwith

Counsel for the Petitioner: MR.VIJAY KUMAR DEVINENI

Counsel for the Respondent No.: THE ADVOCATE GENERAL

WRIT PETITION NO : 17651 of 2004

Between:

Boya Marenna, S/o. Boya Thimmappa,
Rep by his Best friend and Maternal Uncle of the detained - Boya Naganna, S/o. Boya Sunkappa

..... PETITIONER

AND

1 The District Collector, Ananthapur District.
2 The Secretary, Department of General Administration, Government of Andhra Pradesh, Secrtariat Buildings, Hyderabad.
3 The Commissioner, Excise & Prohibition, Hyderabad.
4 The Director, Government Regional, Prohibition & Excise,

A.P. Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of writ of Habeas Corpus by holding continued detention of Boya Marenna, S/o. Boya Thimmappa detained under the proceedings of the 1st respondent in Rc.No. 480/P & E/2004/B, Dt. 14-8-2004, as illegal, arbitrary and unconstitutional and consequently to produce the petitioner before this Hon'ble Court and set the detenue at liberty forthwith.

Counsel for the Petitioner: MR.VIJAY KUMAR DEVINENI

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following:

COMMON ORDER:(By G.B.J.)

All these Writ Petitions can be disposed of by a common order.

2. The respective detention orders issued by the Collector and District Magistrate, Anantapur, Adilabad, Karimnagar and East Godavari at Kakinada under the provisions of the A.P.Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 are assailed in these Writ Petitions.

3. Though the detention orders are challenged on various grounds, we are not inclined to go into the grounds urged separately in each Writ Petition, but, however, the common ground urged on behalf of the petitioners is that the detaining authority did not state in the order of detention that the detenus had a right of representation to the detaining authority. Even though it was stated that the detenu can represent to the Advisory Board or the Government, that would not meet the requirement under Article 22(5) of the Constitution of India and therefore on this ground alone, without going into the other aspects of the matter, the order of detention has to be quashed. Reliance was placed by the learned counsel for the petitioners on the decisions of the Supreme Court reported in KAMLESH KUMAR ISHWAR DAS PATEL vs. UNION OF INDIA and UNION OF INDIA vs. SNEHA KHEMKA and as followed by this Court in W.P.No.15867 of 2004 and batch, dated 04-10-2004.

4. On the other hand the learned Advocate General submits that the ground now contended was not specifically urged in some of the Writ Petitions and therefore, it is not open for the petitioners to take advantage of the decision of the Supreme Court without urging the ground in the Writ Petition. However, he does not dispute the principle laid down by the Supreme Court on this aspect.

5. We have considered the representation contentions.

6. The main thrust of attack is based on the protective fabric under Article 22(5) of the Constitution of India. The Supreme Court has emphatically laid down that the detenu has a right of representation to the detaining authority himself and the detaining authority is bound to bring to the notice of the detenu that he has a right of representation and failure to bring this aspect to the notice of the detenu that he has a right of representation vitiates the detention order. Since it is a pure question of law unconnected with the factual situation, we are of the considered view that such a ground need not be taken up specifically in the Writ Petition. When an attack is made on the basis of the violation of the constitutional provisions, it is always open for them to argue the same even without specifically mentioning in the grounds of

Writ Petition. We, however, find that the validity is assailed on the general ground of violation of Article 22(5) of the Constitution. Under those circumstances we are of the considered view that the orders of detention are not sustainable in law in the wake of the decisions of the Supreme Court referred to supra. Accordingly they are set aside.

7. In the result, all these Writ Petitions are allowed and the detenus covered by the respective detention orders shall be set at liberty forthwith, if they are not required in any other case.

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G.BIKSHAPATHY, J

25th October, 2004.

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CH.S.R.K.PRASAD, J

VS

That Rule Nisi have been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the Twenty fifth day of October Two thousand and Four.

ASSISTANT REGISTRAR

Copy to:

1 The Principal Secretary, State of A.P.,
Home Department, Secretariat Buildings, Hyderabad.
2 The Collector & District Magistrate, Adilabad District.

3 The Chief Secretary, Government of Andhra Pradesh,
General Administration (Law and Order-II) Department, Secretariat Buildings, Hyderabad.
4 The Collector and District Magistrate, Karimnagar
5 The Superintendent of Prohibition and Excise, Karimnagar
6 The Superintendent, Central Prison, Warangal.

7 The Secretary, State of A.P. General Admn. Department,
Secretariat, Hyderabad.
8 District Collector & Dist. Magistrate, East Godavari, Kakinada.

9 The District Collector, Ananthapur District.
10 The Commissioner, Excise & Prohibition Hyderabad.

11 The Director, Government Regional Prohibition & Excise.

12 The Director, Government Regional, Prohibition & Excise,

A.P. Hyderabad.

13 Two copies to the learned Advocate General, High Court of A.P.

14 Two copies to the G.P. for Home, High Court of A.P.

15 Two copies to the G.P. for Excise, High Court of A.P.

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